Office - Supreme Court, U.S.
FILED
NOV [illegible]
ALEXANDER L. STEVAS,
CLERK

No. 82-352

In the Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STATES OF AMERICA, PETITIONER

v.

156.81 ACRES OF LAND, MORE OR LESS, SITUATE IN COUNTY OF MARIN, STATE OF CALIFORNIA, ET AL.

MEMORANDUM OPPOSING CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MICHAEL A. KAHN
ROGER B. MEAD
Attorneys for Respondent
Karen Melchers Stackhouse

Folger & Levin
50 California Street
Thirty-Sixth Floor
San Francisco, CA 94111
Telephone: (415) 981-3090

In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-552

UNITED STATES OF AMERICA, PETITIONER

v.

156.81 ACRES OF LAND, MORE OR LESS, SITUATE IN COUNTY OF MARIN, STATE OF CALIFORNIA, ET AL.

MEMORANDUM OPPOSING CERTIORARI

Respondent Karen Melchers Stackhouse submits this memorandum in opposition to the petition of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

This case does not warrant review by this Court:

1. There is no conflict among the decisions of the courts that have recently considered the issue presented by the petition. Each of those courts, in cases which

involved the condemnation of unimproved land, awarded the landowners interest on the condemnation award from the approximate date of taking, as determined by the court, to the date of payment. United States v. 15.65 Acres of Land in the County of Marin, State of California, Nos. 81-4062 & 81-4101 (9th Cir. May 25, 1982, rehearing denied, Sept. 10, 1982); United States v. 156.81 Acres of Land, More or Less, Situate in the County of Marin, State of California, et al., 671 F.2d 336 (9th Cir. 1982); United States v. Certain Lands in Eastham, Truro and Wellfleet, County of Barnstable, Commonwealth of Massachusetts, (D. Mass. May 28, 1982); United States v. 2,175.86 Acres of Land, More or Less, Situated in Hardin and Jefferson Counties, State of Texas, et al., 520 F. Supp. 75 (E.D. Tex. 1981), appeal docketed, No. 81-2402 (5th Cir.); United States v. 59.29 Acres of Land, More or Less, Situated in Hardin County, State of Texas, et al., 495 F. Supp. 212 (E.D. Tex. 1980).

2. The Court of Appeals' decision is in harmony with this Court's decisions in Danforth v. United States, 308 U.S. 271 (1939), and in more recent cases such as Agins v. City of Tiburon, 447 U.S. 255 (1980). In those cases, the Court recognized that the question of whether and when a taking occurs presents issues which must be resolved on a case by case basis. The Court of Appeals correctly applied the teachings of those cases here in

determining when the landowners were effectively deprived of the use and enjoyment of their property to such an extent that a taking had occurred.

3. The Court of Appeals' decision does not unfairly discriminate between owners of developed and undeveloped land by establishing an arbitrary or inflexible distinction between such landowners. Rather, the Court of Appeals' decision recognizes that the status of land as vacant and unimproved is one factor among others to be considered on a case by case basis in determining when a taking in fact occurs. The Court of Appeals' determination that in the circumstances of this case a taking occurred when judgment was entered, because here the condemned property was vacant, unimproved, and not income producing, does not raise issues requiring the attention of this Court.

4. Finally, to require landowners to move for dismissal of a condemnation action in order to ensure due compensation for any increase in the value of condemned property between the date of taking and the date of payment, whether or not the delay in payment was unreasonable, would subject landowners and the courts to a cumbersome and expensive procedure ill-suited to the efficient resolution of condemnation actions. As the Court of Appeals noted, interest is an economical and

effective substitute for the process of computing appreciation for the period between the taking and payment.

Respondent Karen Melchers Stackhouse respectfully requests that the petition of the United States for a writ of certiorari be denied.

Michael A. Kahn
Roger B. Mead
Folger & Levin
Attorneys for Respondent
Karen Melchers Stackhouse

Dated: November 19, 1982